

JOSEPH H. HUNT
Assistant Attorney General

DAVID L. ANDERSON
United States Attorney

MARCIA BERMAN
Assistant Branch Director

R. CHARLIE MERRITT
KEVIN P. HANCOCK
Trial Attorneys
Civil Division, Federal Programs Branch
U.S. Department of Justice
919 East Main Street, Suite 1900
Richmond, VA 23219
Telephone: (202) 616-8098
Fax: (804) 819-7417
E-mail: robert.c.merritt@usdoj.gov

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MARTIN CALVILLO MANRIQUEZ, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION and BETSY DEVOS, in her
official capacity as Secretary of Education,

Defendants.

No. 3:17-cv-7210-SK

**NOTICE OF WITHDRAWAL OF
MOTION FOR LEAVE TO FILE
MOTION FOR PARTIAL
RECONSIDERATION**

1 On November 1, 2019, Defendants filed a motion for leave to file a motion for partial
 2 reconsideration, in which they represented that the Court should reconsider its imposition of a
 3 \$100,000 monetary sanction, *see* Order Regarding Sanctions, ECF No. 130 (“Sanctions Order”) because Defendants were at that time, and at “the time of the Sanctions Order, in full compliance
 4 with the preliminary injunction and have remediated the harm to affected borrowers.” Motion for
 5 Leave to File Motion for Partial Reconsideration at 2, ECF No. 133 (“Motion”). Defendants
 6 hereby withdraw the Motion.
 7

8 Later in the day on November 1, 2019, the U.S. Department of Education’s (“Department”) office of Federal Student Aid (“FSA”), filed a monthly compliance report, *see* ECF No. 136-1
 9 (“November Compliance Report”), as required by the Sanctions Order. In that report, FSA
 10 explained that it had increased its estimate of potential class members by approximately 14,000.
 11 November Compliance Report at 4. Specifically, FSA stated:
 12

13 First, the potential certified class continues to grow as Corinthian borrowers file
 14 new, potentially qualifying borrower defense to repayment applications. Second, as
 15 part of its efforts to ensure that it has identified all potential class members, the
 16 Department is, out of an abundance of caution, examining the records of certain
 17 borrowers whose applications most likely do not qualify them for class
 18 membership. This set includes Corinthian borrower defense applicants who are
 19 tagged in the Department’s systems as either (1) having no Direct Loans after May
 20 2010, (2) having filed an incomplete borrower-defense application, or (3) for whom
 21 100% discharges, as a result of another federal loan discharge process, are in
 22 process for some of the borrowers’ federal student loans, but are not yet complete.
 23 Although [FSA] is confirming its data, which indicates that these three groups of
 24 borrowers are likely excludable from the potential class, FSA has no knowledge
 25 that any of these additional, estimated 14,000 borrowers were impacted by the
 26 Department’s non-compliance.

27 *Id.*

28 While the Department continues the process of reviewing and confirming its data, Defendants cannot fairly represent that they are in “full compliance” with the Court’s preliminary injunction and have remediated the harm to all affected borrowers. Motion at 2. Defendants clarify for the record that the description in the Motion and in the attached Declaration of General Mark A. Brown, Chief Operating Officer of FSA, of remediation efforts with respect to known harm is accurate, namely that by October 24, 2019:

[T]he Department working with the Department of the Treasury (“Treasury”), had ensured that refunds had been issued to all Corinthian borrowers who had been identified as having been subject to involuntary collection efforts, and that the refunds would be exempt from offset against other federal debts. Brown Decl. ¶ 7. The Department had also ensured that refunds had been issued to each Corinthian borrower that the Department could confirm made an erroneous payment. *Id.* ¶¶ 8-10. As explained in the declaration, this did not include a small set of borrowers that either do not appear to have actually make a payment or are believed to have deliberately chosen to make a payment notwithstanding the fact that they were not required to. *Id.* ¶¶ 9-10. The Department is following up with this latter set of borrowers and will process refunds for any such borrower who requests one after being informed of the potential harm that could result from such refund. *Id.* ¶ 10. Finally, the Department and its servicers had corrected the credit reports of all 847 Corinthian borrowers who had been identified as having been subject to adverse credit reporting. *Id.* ¶ 11.

Motion at 4.

Defendants anticipate that they may be able to renew their Motion once FSA completes its review and confirmation process for the approximately 14,000 additional borrowers described in the November Compliance Report. At this time, however, Defendants withdraw their motion for leave to file a motion for partial reconsideration.

Dated: November 5, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MARCIA BERMAN
Assistant Branch Director

/s/ R. Charlie Merritt
R. CHARLIE MERRITT (VA Bar No. 89400)
KEVIN P. HANCOCK
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
919 East Main Street, Suite 1900
Richmond, VA 23219
Telephone: (202) 616-8098
Fax: (804) 819-7417
robert.c.merritt@usdoj.gov

Counsel for Defendants